

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Brian Whitaker

Plaintiff,

v.

Teaspoon Burlingame, LLC, a California
Limited Liability Company

Defendants.

Case No. 4:21-cv-06894-SBA

**First Amended Complaint For
Damages And Injunctive Relief
For Violations Of: Americans With
Disabilities Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Teaspoon Burlingame, LLC, a California Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Teaspoon Burlingame, LLC, owned Teaspoon located at or about 240 Park Rd, Burlingame, California, in August 2021.

3. Defendant Teaspoon Burlingame, LLC, owns Teaspoon located at or about 240 Park Rd, Burlingame, California, currently.

1 4. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the property and business, or their
3 relative responsibilities in causing the access violations herein complained of, and
4 alleges a joint venture and common enterprise by all such Defendants. Plaintiff is
5 informed and believes that each of the Defendants herein is responsible in some
6 capacity for the events herein alleged, or is a necessary party for obtaining
7 appropriate relief. Plaintiff will seek leave to amend when the true names,
8 capacities, connections, and responsibilities of the Defendants are ascertained.

9
10 **JURISDICTION & VENUE:**

11 5. The Court has subject matter jurisdiction over the action pursuant to 28
12 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
13 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

14 6. Pursuant to supplemental jurisdiction, an attendant and related cause of
15 action, arising from the same nucleus of operative facts and arising out of the
16 same transactions, is also brought under California's Unruh Civil Rights Act, which
17 act expressly incorporates the Americans with Disabilities Act.

18 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
19 founded on the fact that the real property which is the subject of this action is
20 located in this district and that Plaintiff's cause of action arose in this district.

21
22 **FACTUAL ALLEGATIONS:**

23 8. Plaintiff went to Teaspoon in August 2021 with the intention to avail
24 himself of its goods or services motivated in part to determine if the defendants
25 comply with the disability access laws.

26 9. Teaspoon is a facility open to the public, a place of public accommodation,
27 and a business establishment.

28 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed to

1 provide wheelchair accessible outside dining surfaces in conformance with the
2 ADA Standards as it relates to wheelchair users like the plaintiff.

3 11. Teaspoon provides dining surfaces to its customers but fails to provide
4 wheelchair accessible outside dining surfaces.

5 12. One problem that plaintiff encountered was the lack of sufficient knee or
6 toe clearance under the outside dining surfaces for wheelchair users.

7 13. Plaintiff believes that there are other features of the dining surfaces that
8 likely fail to comply with the ADA Standards and seeks to have fully compliant
9 dining surfaces for wheelchair users.

10 14. On information and belief, the defendants currently fail to provide
11 wheelchair accessible dining surfaces.

12 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
13 personally encountered these barriers.

14 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
15 wheelchair accessible facilities. By failing to provide accessible facilities, the
16 defendants denied the plaintiff full and equal access.

17 17. The failure to provide accessible facilities created difficulty and discomfort
18 for the Plaintiff.

19 18. The defendants have failed to maintain in working and useable conditions
20 those features required to provide ready access to persons with disabilities.

21 19. The barriers identified above are easily removed without much difficulty or
22 expense. They are the types of barriers identified by the Department of Justice as
23 presumably readily achievable to remove and, in fact, these barriers are readily
24 achievable to remove. Moreover, there are numerous alternative
25 accommodations that could be made to provide a greater level of access if
26 complete removal were not achievable.

27 20. Plaintiff will return to Teaspoon to avail himself of its goods or services and
28 to determine compliance with the disability access laws once it is represented to

1 him that Teaspoon and its facilities are accessible. Plaintiff is currently deterred
 2 from doing so because of his knowledge of the existing barriers and his
 3 uncertainty about the existence of yet other barriers on the site. If the barriers
 4 are not removed, the plaintiff will face unlawful and discriminatory barriers
 5 again.

6 21. Given the obvious and blatant nature of the barriers and violations alleged
 7 herein, the plaintiff alleges, on information and belief, that there are other
 8 violations and barriers on the site that relate to his disability. Plaintiff will amend
 9 the complaint, to provide proper notice regarding the scope of this lawsuit, once
 10 he conducts a site inspection. However, please be on notice that the plaintiff
 11 seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524
 12 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a
 13 site, he can sue to have all barriers that relate to his disability removed regardless
 14 of whether he personally encountered them).

15
 16 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES**
 17 **ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section
 18 12101, et seq.)

19 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth again
 20 herein, the allegations contained in all prior paragraphs of this complaint.

21 23. Under the ADA, it is an act of discrimination to fail to ensure that the
 22 privileges, advantages, accommodations, facilities, goods and services of any
 23 place of public accommodation is offered on a full and equal basis by anyone who
 24 owns, leases, or operates a place of public accommodation. See 42 U.S.C. §
 25 12182(a). Discrimination is defined, inter alia, as follows:

- 26 a. A failure to make reasonable modifications in policies, practices, or
 27 procedures, when such modifications are necessary to afford goods,
 28 services, facilities, privileges, advantages, or accommodations to

1 individuals with disabilities, unless the accommodation would work
2 a fundamental alteration of those services and facilities. 42 U.S.C. §
3 12182(b)(2)(A)(ii).

4 b. A failure to remove architectural barriers where such removal is
5 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
6 defined by reference to the ADA Standards.

7 c. A failure to make alterations in such a manner that, to the maximum
8 extent feasible, the altered portions of the facility are readily
9 accessible to and usable by individuals with disabilities, including
10 individuals who use wheelchairs or to ensure that, to the maximum
11 extent feasible, the path of travel to the altered area and the
12 bathrooms, telephones, and drinking fountains serving the altered
13 area, are readily accessible to and usable by individuals with
14 disabilities. 42 U.S.C. § 12183(a)(2).

15 24. When a business provides dining surfaces, it must provide accessible
16 dining surfaces.

17 25. Here, accessible dining surfaces have not been provided in conformance
18 with the ADA Standards.

19 26. The Safe Harbor provisions of the 2010 Standards are not applicable here
20 because the conditions challenged in this lawsuit do not comply with the 1991
21 Standards.

22 27. A public accommodation must maintain in operable working condition
23 those features of its facilities and equipment that are required to be readily
24 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

25 28. Here, the failure to ensure that the accessible facilities were available and
26 ready to be used by the plaintiff is a violation of the law.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On
2 behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

3 29. Plaintiff repleads and incorporates by reference, as if fully set forth again
4 herein, the allegations contained in all prior paragraphs of this complaint. The
5 Unruh Civil Rights Act ("Unruh Act") guarantees, inter alia, that persons with
6 disabilities are entitled to full and equal accommodations, advantages, facilities,
7 privileges, or services in all business establishment of every kind whatsoever
8 within the jurisdiction of the State of California. Cal. Civ. Code §51(b).

9 30. The Unruh Act provides that a violation of the ADA is a violation of the
10 Unruh Act. Cal. Civ. Code, § 51(f).

11 31. Defendants' acts and omissions, as herein alleged, have violated the Unruh
12 Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's rights to
13 full and equal use of the accommodations, advantages, facilities, privileges, or
14 services offered.

15 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
16 discomfort or embarrassment for the plaintiff, the defendants are also each
17 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

18
19 **PRAYER:**

20 Wherefore, Plaintiff prays that this Court award damages and provide relief
21 as follows:

22 1. For injunctive relief, compelling Defendants to comply with the Americans
23 with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not
24 invoking section 55 of the California Civil Code and is not seeking injunctive relief
25 under the Disabled Persons Act at all.

26 2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam*
27 *v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other
28 equitable relief the Court sees fit to grant.

1 3. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to
4 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: October 25, 2021

CENTER FOR DISABILITY ACCESS

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8 By: /s/Josie Zimmermann

9 Josie Zimmermann Esq.
10 Attorney for plaintiff
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